

CONTINENTAL DIVIDE TRAIL SOCIETY

IBLA 93-634

Decided April 25, 1997

Appeal from a decision of the Colorado State Office, Bureau of Land Management, dismissing protest to proposed land exchange. C-52864.

Affirmed.

1. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges--Private Exchanges: Public Interest

Section 206(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716(a) (1994), authorizes the Secretary of the Interior to exchange public lands, or an interest therein, if the public interest will be well served by such exchange. A protest against an exchange is properly dismissed if the protestant fails to establish that the proposed exchange would violate the Act or applicable regulations or would contravene the public interest.

APPEARANCES: James R. Wolf, Director, Continental Divide Trail Society, Bethesda, Maryland, for Appellant; Charles B. White, Esq., and Carrie A. Mineart, Esq., Denver, Colorado, for the Daniel L. Ritchie Corporation; Glenn F. Tiedt, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

The Continental Divide Trail Society (the Society) has appealed from the August 2, 1993, Decision of the Colorado State Office, Bureau of Land Management (BLM), dismissing the Society's protest to the proposed Grand River Ranch land exchange. The exchange, as finally adopted, involves a conveyance by the Daniel L. Ritchie Corporation (Ritchie) of 3,352.3 acres of private land located in Grand and Jackson Counties, Colorado, to the United States in return for the transfer of 5,196.4 acres of Federal land situated in those counties. 1/ The purpose of the exchange, as explained

1/ The offered private land includes four parcels: Williams Fork, containing approximately 2,628.03 acres in secs. 28, 29, 31, 32, and 33, T. 1 S., R. 78 W., and secs. 5, 6, 7, 8, 17, and 18, T. 2 S., R. 78 W., and

in Environmental Assessment (EA) No. CO-081-93-05, is to enhance resource management and public recreational activities in Grand County, Colorado, establish legal public access to a portion of the Williams Fork Range within the Routt and Arapaho National Forests in Grand County, reduce private land trespass problems, and consolidate public and private land ownership patterns in Grand and Jackson Counties. (EA at 4-5.)

Ritchie proposed the Grand River Ranch land exchange to BLM and the U.S. Forest Service (USFS) in May 1989, pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1716 (1994), and notice of the contemplated exchange was published in the Federal Register on June 20, 1991, describing the purpose of the exchange and seeking public comment. 56 Fed. Reg. 28411 (June 20, 1991). After receiving and reviewing comments on the exchange, including letters from the Society, and preparing the EA for the proposal, BLM published another notice of the proposed exchange in the Federal Register on January 4, 1993, 58 Fed. Reg. 114, as corrected on April 7, 1993, 58 Fed. Reg. 18106. The notice explained that the purpose of the exchange was "to facilitate improved resource management and to dispose of scattered, difficult to manage public land parcels while consolidating ownership of and establishing legal access to other public lands," announced the availability of the EA, and provided a 45-day comment period. 58 Fed. Reg. 114 (Jan. 4, 1993).

By letter dated February 8, 1993, the Society commented on the proposed exchange, stating that the lands in question were exceptionally significant to the public interest because they provided an essential corridor for the Continental Divide National Scenic Trail (CDNST), established in section 5(a)(5) of the National Trails System Act (NTSA), 16 U.S.C. § 1244(a)(5) (1994). The Society suggested that BLM use the exchange to create a public right-of-way that would maximize the outdoor

fn. 1 (continued)

secs. 12 and 13, T. 2 S., R. 79 W., Sixth Principal Meridian, Grand County; Red Dirt Reservoir, embracing about 603.16 acres described as Tracts 48, 49, and 49A, T. 3 N., R. 82 W., and Tract 39A, T. 2 N., R. 82 W., Sixth Principal Meridian, Grand County; Diamond Creek, encompassing approximately 91.11 acres in sec. 33, T. 5 N., R. 81 W., Sixth Principal Meridian, Grand County; and Grizzly Creek, consisting of about 30 acres in secs. 13 and 14, T. 5 N., R. 82 W., Sixth Principal Meridian, Jackson County. The selected Federal lands form three parcels: Muddy Pass, totalling approximately 4,465.98 acres in secs. 5, 7, 8, 17, and 18, T. 4 N., R. 81 W., sec. 1, T. 4 N., R. 82 W., secs. 7, 17, 18, 19, 20, 28, 29, 30, 31, 32, and 33, T. 5 N., R. 81 W., and secs. 24 and 25, T. 5 N., R. 82 W., Sixth Principal Meridian, Grand and Jackson Counties; Tyler Mountain, containing about 385.04 acres in secs. 24, 25, and 36, T. 3 N., R. 82 W., Sixth Principal Meridian, Grand County; and Mitchell, comprising approximately 345.42 acres in secs. 30 and 31, T. 3 N., R. 80 W., and sec. 25, T. 3 N., R. 81 W., Sixth Principal Meridian, Grand County.

recreation potential of the lands for purposes of the CDNST by considering the effect of the exchange on the establishment of the right-of-way and analyzing alternatives available to enhance the viability of the right-of-way. According to the Society, proceeding with the proposed exchange would remove any incentive Ritchie had to sell or donate an easement over the private lands within the Grand River Ranch, thus thwarting the Society's ability to put a first-rate scenic trail in place. The Society submitted that BLM should bargain for a trail easement over the private lands concurrently with the land exchange negotiations and that if Ritchie refused to negotiate, BLM should retain the public lands until such time as there could be a better accommodation of public and private needs. The Society contended that proceeding with the exchange, absent the acquisition of an easement over Ritchie's private land for a limited, nonmotorized trail, would involve an unwise, imprudent, irreversible, and irretrievable commitment of resources.

The USFS responded to the Society's comments in a letter dated February 25, 1993, explaining that the land exchange would have no effect on the need to negotiate with Ritchie for a right-of-way for the CDNST and advising the Society that Ritchie had agreed to preserve the public's right to use any length of the CDNST that crossed current public land. Alternative routes for the CDNST, including one route crossing only public land, had been identified, USFS stated, thus reducing the need to traverse private land. The USFS further noted that the Colorado Division of Wildlife had indicated that the alternative crossing the Grand River Ranch might be more disruptive to wildlife than any other alternative. Since several location options for the CDNST outside the Grand River Ranch existed and the best location might not even involve the Ranch, USFS considered it a mistake to make the exchange contingent on a right-of-way for a location that might not be the preferred one. As the success of CDNST right-of-way acquisition was completely independent of the land exchange, USFS stated that it would have the same location options, negotiation and procurement process, and involved individuals with or without the exchange, and Ritchie would have the same incentive to sell or donate a right-of-way regardless of the exchange. The USFS concluded that the exchange should focus solely on the benefits to the public identified in the EA and that a separate process should address right-of-way acquisition for the CDNST.

The Director of the Society also met with the Kremmling Resource Area Manager, BLM, on March 22, 1993, to discuss the Society's concerns with the land exchange and its desire that the land exchange be used as a mechanism to negotiate and acquire a trail easement across Grand River Ranch private land to establish the desired trail route. See Area Manager's Memorandum to the File. At this meeting, the Director proposed a few trail route options crossing varying amounts of the Ranch. The Society also contacted BLM telephonically several times to discuss the exchange.

After reviewing the analysis in the EA and the public comments, the Craig District Manager, BLM, approved the proposed land exchange on April 1, 1993, and the Routt National Forest Supervisor, Rocky Mountain Region, USFS, concurred in the approval on April 5, 1993. In the Decision Record, BLM identified several easements and reservations that had been

developed as a result of the discovery, during the public comment and environmental analysis stages of the land exchange process, of various features and values warranting protection. Included in the listed easements and reservations was one designed to protect the integrity of the CDNST: "To preserve alternative routes being considered for the [CDNST], Ritchie will enter into an easement agreement with the USFS authorizing a perpetual trail easement across the selected BLM lands for the purpose of the CDNST once the preferred route for the CDNST is selected by the USFS."

(Decision Record at unnumbered p. 1.) The BLM indicated that the easement agreement would be executed concurrently with the completion of the exchange. Id.

The BLM determined that the exchange of land conformed to FLPMA and the 1984 Kremmling Resource Management Plan (RMP) and would be in the public interest because:

- 1) [T]he offered lands possess important resource values, including riparian/wetland values, wildlife habitat, and recreational values that would be protected and made available for public use through acquisition by the United States[;]
- 2) acquisition of the offered land would provide access to over 6,000 acres of adjacent public land and would result in enhancement of resource management and use on both the acquired land and adjacent public lands[;]
- * * *
- 3) disposal of the selected public lands would not result in significant adverse impacts because of their isolated, inaccessible nature and relatively small sizes;
- 4) the total length of boundary between public and private land would be reduced, and both public and private lands could be managed more efficiently and with less trespass; [and]
- 5) the selected parcels do not contain particularly unique or sensitive resources, other than those features and/or values that will be protected through the previously described easements and reservations. The resources found on the selected parcels exist on the offered parcels with at least the same, if not greater, quality and they are accessible to the public.

(Decision Record at unnumbered p. 2.) The Decision also stated that offered lands within the National Forest boundaries would become National Forest and managed by USFS. Id.

The BLM summarized the comments and issues raised by the public. In response to the Society's suggestion that BLM use the exchange as a means to acquire a trail easement across Ritchie's private land for the CDNST, BLM stated that the alternative had been considered and eliminated because:

- 1) [P]lanning and analysis of the full CDNST route has not yet been completed by the USFS, and no preferred alternative has been identified;
- 2) several alternatives for the CDNST have been identified by the USFS in the Muddy Pass area which would not require acquiring easements across Ritchie's property;
- 3) the purpose of this exchange was to acquire key properties in the Williams Fork and Red Dirt locations and to consolidate public land management,

not to bargain for access across Grand River Ranch for the CDNST.

To protect the public interest in the CDNST and address the commentor's concerns while pursuing the exchange, the USFS and Ritchie would sign an easement agreement to retain the opportunity for crossing the selected BLM lands should the preferred alternative be located along that route (see section on Easements/Reservations).

(Decision Record at unnumbered p. 4.)

The Society protested the proposed land exchange to the Director, Colorado State Office, BLM, in accordance with the directions contained in the Decision Record. Objecting only to the portions of the Decision relating to the Muddy Pass parcel, the Society asserted that the Decision, if implemented, would result in an irreversible and irretrievable commitment of resources in a manner which failed to give due regard to relevant environmental concerns, specifically the concerns recognized by Congress in designating the CDNST as a part of the national trails system, and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with NTSA, FLPMA, and the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332 (1994). (May 3, 1993, Protest at unnumbered pp. 1-2.)

The Society contended that the only way to provide for the maximum outdoor recreational potential of the CDNST was to seek to obtain passage across lands now held by private parties through negotiating willing exchanges with private landowners and that, before public land was made available to a private landowner, the landowner should have been required to grant an easement allowing people desiring to use the CDNST for nonmotorized recreation to pass through some designated portion of the private property. Id. at unnumbered p. 2. Even if viable alternatives for location of the CDNST existed, the Society submitted that there should not have been an irreversible commitment of the selected public lands until after those alternatives had been identified and evaluated in accordance with section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (1994), explaining that it considered the commitment as irreversible because there was little likelihood that the landowner would agree later to an easement if he were not prepared to do so now or that such an easement could be acquired on an involuntary basis. Id. at unnumbered p. 3. The BLM's failure to describe and study appropriate alternatives before undertaking the exchange violated NEPA, the Society argued, and the lack of analysis of the full CDNST's route necessitated either the acquisition of a right-of-way now or the preservation of the status quo until completion of such an analysis. Id.

The Decision also ignored the statutory criteria for selection of the CDNST's route set out in NTSA, 16 U.S.C. § 1242(a)(2) (1994), the Society asserted, by not providing for maximum outdoor recreation potential and conservation and enjoyment of nationally significant scenic, historic, natural, or cultural qualities. Id. The Society further contended that the exchange did not serve the public interest because BLM did not consider

the values and objectives which the Muddy Pass parcel could have served if retained in Federal ownership until a right-of-way across private lands had been obtained when making the evaluation required by 43 U.S.C. § 1716(a) (1994), and that the approval decision, therefore, did not comport with FLPMA. Id. Additionally, according to the Society, the land exchange did not conform to the land use planning regulations found in 43 C.F.R. Part 1601, to relevant land management plans, or to the public land management objectives set out in 43 C.F.R. § 1725.3-3 (1992). Id. at unnumbered pp. 3-5. The Society requested that the Decision be vacated and remanded for a new examination of the available options. Id. at unnumbered p. 5.

In its August 2, 1993, Decision, the Colorado State Office, BLM, concurred with the Craig District Manager's decision to proceed with the Grand River Ranch land exchange and dismissed the Society's protest. After advising the Society that several of the regulations cited in the protest were not applicable to the challenged action and that the EA for the exchange had found the action to be in conformance with the 1984 Kremmling RMP, BLM addressed the substantive issues raised in the protest.

The BLM reiterated that the purpose of the exchange was not to establish a route for the CDNST in the Muddy Pass area or force public access across private property, but to establish legal public access to part of the Williams Fork Range, reduce private land trespass problems, and consolidate public and private land ownership patterns in Grand and Jackson Counties. (Decision at 2.) The BLM denied that the exchange would result in an irreversible and irretrievable commitment of resources important to the CDNST because Ritchie had agreed to sign a trail easement agreement concurrently with the transfer of land title for the exchange, and this agreement would reserve the opportunity for the Federal Government to establish a trail easement for the CDNST on any of the selected parcels once the preferred route alternative had been chosen. Id.

The BLM explained that the several alternative routes available for the CDNST within the Muddy Pass area would be evaluated and the preferred alternative selected through a complete NEPA planning and analysis process for the CDNST, a procedure to which both BLM and USFS were committed. Options that might include the selected public land remained viable, BLM noted, due to the easement agreement. The BLM added that, under NTSA, some alternatives for the CDNST in the Muddy Pass area could be motorized. The BLM also observed that NTSA encouraged utilizing existing rights-of-way and avoiding private land except where absolutely necessary.

The BLM stated that the evaluation of the alternative routes would determine the need, if any, for easements over private land and that even if such easements were necessary, they might not involve the Grand River Ranch. Id.

The BLM found no inconsistency between the exchange and NTSA or the comprehensive plan for CDNST. ^{2/} Rather, BLM considered the Society's

^{2/} The case file does not contain a copy of the full plan although it does include copies of Map 41 from the plan which identifies several location alternatives for the CDNST.

assertion that the exchange should be used to establish access across private land despite the existence of other alternatives to be contradictory to NTSA's directive that minimizing adverse effects on the adjacent landowner or user and his operation should be accorded full consideration in trail right-of-way selection, 16 U.S.C. § 1246(a)(2) (1994), and the comprehensive plan's guidance that existing trails and rights-of-way should be utilized as much as possible and private land avoided except where absolutely necessary or offered for use by the landowner. (Decision at 2-3.) The BLM indicated that Ritchie had expressed a willingness to discuss and consider possible routes across the north end of the ranch but only as part of the evaluation of all possible alternatives and with just compensation. Id. at 3. In any event, according to BLM, the trail easement agreement included as part of the land exchange preserved the status quo on the selected Federal lands. Id.

The BLM determined that the exchange had been fully evaluated in the EA and the public had been provided several notifications about the proposal as well as two comment periods in which to provide input. BLM further found that the EA thoroughly evaluated alternatives for the land exchange, including no action, and thus complied with the requirements of NEPA. Id. Accordingly, BLM concluded that the public interest would be well served by completing the exchange, decided to proceed with the exchange as proposed, and dismissed the Society's protest. Id. at 4.

In its statement of reasons (SOR), the Society alleges as clear errors of law BLM's finding that the proposed land exchange is in the public interest as required by 43 U.S.C. § 1716 (1994) and BLM's failure to consider the effect of the proposed land exchange on the location of the CDNST. (SOR at unnumbered p. 2.) The Society contends that the exchange is not in the public interest because the impact the exchange would have on recreation needs was not properly considered. Id. at unnumbered pp. 6-7. The Society asserts that proper evaluation of the need for recreation areas must recognize relevant statutory goals such as those set out in NTSA, 16 U.S.C. § 1242(a) (1994), and that, therefore, BLM was obligated to assess the effect, if any, proceeding with the exchange would have on the Government's ability to locate the CDNST in a manner that would maximize recreational potential and provide for conservation and enjoyment when addressing the public interest served by the exchange. The Society submits that the record fails to reveal any reasoned analysis on this issue and that the Decision's reliance on the easement agreement's reservation of the Government's right to establish a trail easement on the selected parcels once the preferred alternative has been chosen misses the point since once the selected parcels are transferred to Grand River Ranch, the opportunity to meet recreation needs may be lost forever. Id. at unnumbered p. 7.

The Society objects to BLM's failure to refer to the comprehensive plan for the CDNST in its initial decision, asserting that this failure violates BLM's obligation under 43 U.S.C. § 1716 (1994) to give full consideration to better Federal land management when evaluating proposed land exchanges. Id. at unnumbered p. 8. According to the Society, Map 41 of the plan identifies several location alternatives, each of which places

the CDNST across private lands as well as parts of the public lands to be transferred. Id. The Society asserts that the plan's directive that private land be avoided unless offered for use by the landowner simply highlights the importance of the key issue, i.e., "since the private land (which affords optimal opportunities for trail location) is to be avoided except where offered for use by the landowner, how might the land managing agencies exercise their discretion so as to encourage such an offer?" Id. at unnumbered pp. 8-9. ^{3/}

The Decision fails to consider appropriate alternatives as required by NEPA, 42 U.S.C. § 4332(2)(E) (1994), the Society argues, because an unresolved conflict exists concerning the use of the public lands to be conveyed to the Grand River Ranch. Id. at unnumbered p. 10. The Society defines the controversy as whether or not these resources should be managed in a manner to facilitate achievement of the goals of NTSA and says BLM's Decision is deficient because it fails to discuss an alternative that would contribute to a desirable location of the CDNST. Id. The Society further claims that the Decision neglected to address the indirect effects of the exchange, specifically, the effect that transferring public lands to Grand River Ranch might have upon the ability to negotiate a desirable right-of-way at a later date, asserting that BLM has an obligation under NEPA to consider whether the development of the selected public land for public purposes would be impaired as a result of the exchange. Id. at unnumbered pp. 10-11. According to the Society, proceeding with the exchange would diminish the likelihood of acquiring an optimal location for the CDNST, a result sufficiently definite to permit analysis. Id. at unnumbered p. 11.

The Society also complains that, although the Decision stated that USFS had identified location alternatives not requiring easements across Ritchie's private property, none of those options was described in the EA, the Decision, or correspondence between USFS and the Society. Id. at unnumbered p. 12.

The Society submits that it promptly advised BLM of the alternative of modifying the exchange as necessary to obtain a trail easement across the Grand River Ranch and that BLM failed to fulfill its obligation under NEPA to evaluate this option or provide a reasoned explanation as to why the alternative was inappropriate. Id. Such an analysis, the Society maintains, should have included attempted negotiations with Ritchie to ascertain whether such an easement might be procured and a determination as to

^{3/} The Society also disputes BLM's conclusion that 43 C.F.R. § 1725.3-3(f) (1992), which identifies the objectives for outdoor recreation as including the management of public lands with open-space values to preserve those values and make them available for appropriate recreation enjoyment by the public, has no relevance to the exchange, arguing that the regulation has not been repealed and is entirely consistent with FLPMA. (SOR at unnumbered pp. 9-10.) We need not decide the applicability of this regulation since, even assuming its pertinence, we find that BLM's Decision advances the outdoor recreation objectives set forth in the regulation.

whether a modified land exchange would be in the public interest. Id. at unnumbered pp. 12-13. The Society requests that BLM be required to acquire an option now granting the right to establish a trail easement across the Grand River Ranch should the USFS evaluation of alternatives for the CDNST conclude that such a right-of-way is the preferred route for the trail, thus preserving the opportunity to locate the CDNST in accordance with statutory goals. Id. at unnumbered p. 14. The Society proposes that, in order to compensate Ritchie for the right-of-way across the private land, the exchange could be modified by reducing the private acreage transferred to the United States. Id.

In its answer, Ritchie asserts that the Decision appropriately determined that the exchange is in the public interest. Ritchie avers that BLM thoroughly considered the need for recreation areas in approving the exchange, noting that the exchange creates significant recreational opportunities at Red Dirt Reservoir and in the Williams Fork Mountains and provides for conservation easements and an operating agreement to maintain and enhance recreational opportunities and other public values of the affected lands. (Ritchie Answer at 2-3.) The terms of the exchange, Ritchie submits, will not impair construction and use of the CDNST on the land involved in the exchange because Ritchie has agreed to dedicate a perpetual easement across the selected public land through which trail routes can be located, thus perpetuating BLM's current ability to use portions of the selected land for the CDNST. Id.

Ritchie contends that the Society's assertion that BLM has failed to adequately consider the public interest because BLM did not use the land exchange as a vehicle to acquire rights-of-way for the CDNST across unrelated private land has no basis in law since NTSA, which directs that land exchanges for CDNST purposes be voluntary, neither requires nor authorizes BLM or USFS to use unrelated land exchanges as leverage to obtain easements for the CDNST. Id. Ritchie maintains that the Decision and the EA demonstrate that BLM properly considered the factors set out in FLPMA, 43 U.S.C. § 1716(a) (1994), as pertinent to the determination of whether a particular land exchange serves the public interest and support approval of the exchange. Id. at 4.

Ritchie disputes the Society's contention that BLM did not consider appropriate alternatives, such as alternatives to further the goals of NTSA, reiterating that the exchange facilitates these objectives through the easement agreement and adding that the use of available resources pursuant to the exchange will produce an increased public benefit as compared to current circumstances. Id. at 5. No unresolved conflict concerning the uses of available resources involved in the exchange exists, Ritchie argues, because the commitment of Federal lands to the exchange does not affect the location of the CDNST or the process by which rights to locate the trail will be secured. Id. at 6. Since the easement agreement enhances the alternatives for CDNST location by providing for the construction of the trail on any of the selected lands and access over private lands unconnected to the exchange does not relate to or depend

in any way upon the exchange or BLM's decision to approve it, Ritchie asserts that the exchange does not impede the success of the CDNST or the selection of location alternatives and, therefore, does not conflict with NEPA. Id.

Ritchie contends that the relief requested by the Society would not serve the public interest. Such relief would delay the significant public benefits arising from the exchange and ultimately sacrifice them to the speculative acquisition of easements for the CDNST on unrelated land which may not even be needed for the trail, Ritchie avers, and would lead to unnecessary expense, inconvenience, and delay for both BLM and Ritchie. Id. at 7. Ritchie asks that the Society's appeal be dismissed.

In its answer (filed November 4, 1993, and entitled Response to Request for Stay), BLM asserts that swapping a public inholding in a private ranch for private land providing critical access to other public land clearly furthers the public interest and that reserving a trail right-of-way across the selected public lands leaves unimpaired the Government's ability to ultimately locate the CDNST through those lands. (BLM Response at 1.) The acquisition of a right-of-way across the ranch to connect the reserved easement to other public lands is completely independent of and unrelated to the exchange, BLM argues. The BLM points out that accepting the Society's demand that BLM obtain a right-of-way across private land for the CDNST in partial exchange for the public lands involved, even though no route for the trail has yet been chosen, would require the Government to accept private lands of lesser fair market value than those actually received in order to preserve a speculative option and that, if the route finally adopted does not traverse the Grand River Ranch, the public will suffer the permanent loss of the exchange values involved. Id. at 2.

The Society's contention that BLM neglected to consider the effect of the proposed exchange on the location of the CDNST is belied by the Society's own statement of facts, BLM avers, which demonstrates that BLM evaluated and responded to the Society's comments at every stage of the process before approving the exchange. Id. The BLM further contends that the record clearly establishes that the impact of the exchange on the need for recreation areas was thoroughly analyzed, observing that the lands acquired by the United States in the exchange contain 1.8 miles of riparian habitat and 53 acres of wetlands and afford legal access to approximately 6,000 acres of public land currently administered by USFS. Thus, BLM submits, the proposed exchange provides an immediate and tangible benefit for public outdoor recreation in contrast to the at best speculative future benefit of obtaining a right-of-way for a route for the CDNST that might never materialize. Id. at 2-3.

The BLM asserts that the development of the private land surrounding the exchanged area, the apparent focus of the Society's concern, is unaffected by the exchange. Id. at 3. Finally, BLM argues that the Society's sought relief of modification of the proposed exchange to reduce the acreage transferred to the United States in exchange for an option to establish

a right-of-way across the ranch constitutes a request that the Board substitute its judgment for that of BLM's and, therefore, should be denied.

[1] Section 206(a) of FLPMA, as amended, 43 U.S.C. § 1716(a) (1994), authorizes the Secretary of the Interior to dispose of a tract of public land by exchange where he "determines that the public interest will be well served by making that exchange."

In determining whether an exchange is in the public interest, section 206(a) of FLPMA states that the Secretary "shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife."

Id. Furthermore, it provides that the Secretary shall find that "the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired." Id.; see also 43 C.F.R. § 2200.0-6.

The weight to be given every element bearing on such decisionmaking is left to the discretion of the Secretary. Barrett S. Duff, 122 IBLA 244, 247 (1992). However, as part of determining whether the transfer would serve the public interest, BLM must also evaluate whether the transfer would adversely impact the public interest. Id.; City of Santa Fe, 103 IBLA 397, 400 (1988); Mendiboure Ranches, 90 IBLA 360, 365 (1986).

As noted above, after thoroughly evaluating the proposed exchange, including preparing an EA and seeking and considering public comments, BLM concluded that the Grand River Ranch land exchange would be in the public interest. The benefits of consummating the exchange include increased riparian, wetland, and recreational values protected by the United States, access to over 6,000 acres of adjacent public land leading to improved resource management and public use on both the acquired private and contiguous public lands, and consolidation of public and private land ownership resulting in more efficient management and less trespass. In order to preserve alternative routes for the CDNST, BLM's Decision also incorporates Ritchie's commitment to enter into an easement agreement with USFS authorizing a perpetual trail easement across the selected BLM lands for purposes of the CDNST once USFS chooses the preferred route for the trail.

Although the exchange, with the trail easement agreement, indisputably will not impair the Government's ability to locate the CDNST anywhere on the public lands to be transferred to Ritchie, the Society nevertheless maintains that the exchange is not in the public interest because BLM did not use it as a vehicle to acquire rights-of-way for the CDNST across unrelated private land. We disagree.

The record contains ample support for BLM's conclusion that proceeding with the exchange will not limit the Government's options in locating the CDNST in a manner that will achieve NTSA's goals of maximizing outdoor

recreation potential and providing for conservation and enjoyment. See 16 U.S.C. § 1242(a)(2) (1994). Not only does the easement agreement protect alternative locations on the selected public lands, but the exchange has no effect whatsoever on the available procedures for obtaining rights-of-way for the CDNST over private land. The Society's supposition that proceeding with the exchange will somehow diminish Ritchie's amenability to negotiate with BLM or USFS for trail rights-of-way across private land is completely speculative. We find that BLM adequately considered the effects of proceeding with the exchange on alternative routes for the CDNST and properly concluded that the exchange would not impede the location of the CDNST along the best possible route since all routes available before completion of the exchange will remain viable after the exchange has been finalized.

We further conclude that BLM's unwillingness to make the exchange contingent on Ritchie's grant of a right-of-way across private ranch land does not run afoul of NTSA or the comprehensive plan for the CDNST. The statute, 16 U.S.C. § 1246(a)(2) (1994), directs that adverse effects on adjacent private landowners be minimized, while the plan, which BLM appropriately considered to the extent relevant to the exchange, calls for the utilization of existing trails and rights-of-way as much as possible and the avoidance of private land except where absolutely necessary or offered for use by the landowner. (Plan at 9-10, as quoted in BLM's Aug. 2, 1993, Decision at 3.) In fact, since options for the trail apparently exist which do not traverse private land, accepting the Society's contention and using the unrelated FLPMA land exchange to force Ritchie to grant an easement across private land would actually conflict with the guidance of NTSA and the plan.

We similarly reject the Society's contention that BLM's Decision was deficient because it did not discuss an alternative that would contribute to a desirable location of the CDNST or address the exchange's indirect effect on the Government's ability to negotiate a desirable right-of-way for the CDNST at a later date. These arguments, although couched as violations of NEPA, 42 U.S.C. § 4332(2)(E) (1994), essentially reiterate the Society's stance that the approval of exchange should have been conditioned on Ritchie's grant of a trail right-of-way across unconnected private land. The EA prepared for the exchange addressed the effects transferring the selected Federal parcels would have on the CDNST and concluded that, while location of the trail would still be complicated by the need to obtain access rights over current private property, the easement agreement reserving trail access across the selected lands would preserve the viability of all the routing alternatives for the as yet unidentified preferred route for the CDNST. (EA at 47.) The need to acquire rights-of-way over private land remains the same regardless of whether BLM proceeds with the exchange. See EA at 66, Table 8.

The Society suggests that a better use of the selected Federal land would be as a partial exchange for a CDNST right-of-way over Ritchie's private lands and that this alternative should have been considered during BLM's evaluation of the Grand River Ranch land exchange. The purpose

of this exchange, however, is not to acquire easements over private land for the CDNST, although such exchanges are authorized by NTSA, 16 U.S.C. § 1246(f) (1994), once the preferred location for the trail has been determined. Rather, the objective of this exchange is to enhance resource management and recreational activities in Grand County, establish legal public access to a portion of the Williams Fork Range, reduce private land trespass problems, and consolidate public and private land ownership patterns in Grand and Jackson Counties. (EA at 4-5.) While NEPA requires that, in addition to the proposed action, a Federal agency consider alternatives thereto, such alternatives are limited to those which can be accomplished and also fulfill the objective sought to be achieved by the action. See Howard B. Keck, Jr., 124 IBLA 44, 53 (1992), and authorities cited. The BLM's Decision Record approving the exchange addressed the Society's suggested alternative and thoroughly explained the rationale for eliminating it as a viable option. See Decision Record at unnumbered p. 4.

Since the alternative preferred by the Society does not accomplish the objective of the proposed exchange, BLM's consideration and rejection of that option does not violate NEPA.

We also find no merit in the Society's assertion that BLM failed to consider the indirect effects of the exchange on its ability to negotiate a desirable right-of-way at a later date. Under NEPA, BLM must address the indirect effects of a proposed action, provided those effects are caused by the action. James Shaw, 130 IBLA 105, 113 (1994). Although the Society claims that proceeding with the exchange would probably make it far less likely that a desirable location for the CDNST can be obtained, it has provided no support for this speculation. As discussed above, the proposed exchange, with the incorporated easement agreement for location of the CDNST, preserves the viability of all options for trail routes extant prior to the exchange. Since the easement agreement protects trail routes across the selected public lands and the exchange has no effect on access over private lands for trail purposes, transferring the selected lands to Ritchie will have no indirect impact on the Government's ability to negotiate rights-of-way for the trail.

A protest against a FLPMA land exchange is properly dismissed if the protestant does not establish that the proposed exchange would violate the Act or applicable regulations or would contravene the public interest.

Barrett S. Duff, *supra*, at 248. The Society has not demonstrated that BLM failed to properly consider any relevant factor bearing on whether the proposed land exchange would be in the public interest. See Burton A. and Mary H. McGregor, 119 IBLA 95, 103 (1991), and cases cited. Nor has the Society shown that the exchange violates FLPMA or the applicable regulations. Accordingly, BLM's Decision dismissing the Society's protest must be affirmed.

To the extent not specifically addressed herein, the Society's arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge